

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No. 620/2005

Judgment delivered on: November 5, 2007

National Insurance Company Appellant
Through: Mr. Rajnesh Kumar, Adv.

versus

Smt. Sukha Devi & Ors. Respondents
Through: Mr. Rajpal Singh, Adv. for
respondent Nos. 1, 2, 3, 6, 7 & 8.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J. Oral:

The present appeal is preferred against the Award dated 7.5.2005 of the Motor Accident Claims Tribunal.

The facts of the matter in a nutshell are;-

On 23.2.2004 at about 6.00 p.m. Shri Tulsi Ram was on his foot near Ch. Ram Rikh, MCD Primary School along with his son Agarsain @ Gulshan, when an Eicher Canter bearing registration No. UP12G 5382 being driver in a rash and negligent manner and at a very high speed came from the opposite direction and hit Shri Tulsi Ram, who when taken to the hospital was declared as 'brought dead'. A claim petition was filed before the MACT and award was made on 7.5.2005. Aggrieved with the said Award present appeal is preferred by the appellant insurance company.

The grievance raised in the present appeal is that the Tribunal has not given adjustment of Rs. 50,000/-, which was paid by the appellant in compliance of the interim order.

The other contention raised by the counsel for the appellant is that the appropriate multiplier as laid down in the second schedule of the Motor Vehicles Act has not been applied.

I have heard learned counsel for the parties. Perusal of the operative para of the judgment shows that the directions for adjustment of Rs. 50,000/- has been given by the Tribunal as it is held that the Award in the sum of Rs. 2,70,500/- shall be inclusive of the interim award. In view of this position, there is no force in

the argument of the counsel for the appellant that the adjustment of Rs. 50,000/- is not given while passing the final Award. As regards the second contention of the counsel for the appellant, it has been stated that once the future prospects have been considered by the Tribunal then the multiplier could not have been increased by the Tribunal from the one as laid down in the second Schedule of the Motor Vehicles Act, 1939 (as amended). The deceased in the present case was of 61 years of age and he is survived by his widow, who was 59 years of age at the relevant time, his son of the age of 19 years, respondent No. 2 herein and a minor daughter of the age of 14 years, respondent No. 3 herein, at the relevant time. It is no doubt true that the appropriate multiplier as laid down in the second Schedule, keeping in view the age of the deceased as 61 years, should be 5 and not 7 as granted by the Tribunal. In any case, the Hon'ble Supreme Court in plethora of judgments has said that the said second Schedule is not to be applied like a ready reckoner as there are inherent defects in the second Schedule and that deviation from second Schedule while computing compensation can be made in peculiar facts and circumstances of each case.

In this regard the Hon'ble Apex Court has observed in the

judgment of **United India Insurance Co. Ltd. v. Patricia Jean**

Mahajan, reported in (2002) 6 SCC 281 as reproduced below:-

“It thus makes it clear that it is for the Tribunal to arrive at an amount of compensation, which it may consider to be just in the facts and circumstances of the case. This Court however has been of the view that structured formula as provided under the Second Schedule would be a safe guide to calculate the amount of just compensation. Deviation though permissible, may only be resorted to for some special reasons to do so.”

Looking into the facts of the present case where the deceased is survived by his widow as well as two young children, I do not find any infirmity in the finding of the Tribunal to apply the multiplier of 7.

There is no merit in the appeal and the same is hereby dismissed. Parties are left to bear their own costs.

November 05, 2007
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KAILASH GAMBHIR, J.